

STATE OF NEW YORK

11526

IN ASSEMBLY

June 15, 2004

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Brodsky) --
read once and referred to the Committee on Corporations, Authorities
and Commissions

AN ACT to amend the public service law, in relation to the provision of
residential wireless telephone service and to repeal subdivision 6 of
section 5 of such law

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY,
DO ENACT AS FOLLOWS:

- 1 Section 1. Short title. This act shall be known and may be cited as
2 the "wireless telephone consumer protection act of 2004".
3 S 2. Subdivision 6 of section 5 of the public service law is REPEALED.
4 S 3. The public service law is amended by adding a new section 92-g to
5 read as follows:
6 S 92-G. WIRELESS TELEPHONE FAIR PRACTICES. 1. THE COMMISSION SHALL,
7 WITHIN ONE HUNDRED TWENTY DAYS OF THE EFFECTIVE DATE OF THIS SECTION,
8 PROMULGATE REGULATIONS TO AFFORD CONSUMER PROTECTIONS TO
9 RESIDENTIAL
10 CONSUMERS OF CELLULAR TELEPHONE SERVICES.
11 2. AT A MINIMUM, SUCH REGULATIONS SHALL:
12 A. PROVIDE FOR THE TIMELY WRITTEN DISCLOSURE TO EACH CUSTOMER OF, AT A
13 MINIMUM, THE FOLLOWING INFORMATION CONCERNING ANY PLAN FOR THE
14 PROVISION
15 OF RESIDENTIAL WIRELESS TELEPHONE SERVICE TO SUCH CUSTOMER:
16 I. THE CALLING AREA FOR THE PLAN;
17 II. THE MONTHLY ACCESS FEE OR BASE CHARGE;
18 III. THE NUMBER OF AIRTIME MINUTES INCLUDED IN THE PLAN;
19 IV. ANY NIGHT AND WEEKEND MINUTES INCLUDED IN THE PLAN OR OTHER
20 DIFFERING CHARGES FOR DIFFERING TIME PERIODS AND THE TIME PERIODS WHEN
21 NIGHT AND WEEKEND MINUTES OR OTHER CHARGES APPLY;
22 V. THE CHARGES FOR EXCESS OR ADDITIONAL MINUTES;
23 VI. WHETHER OR NOT, THE EXTENT TO WHICH, PER-MINUTE LONG DISTANCE
24 CHARGES ARE INCLUDED IN OTHER RATES, AND, TO THE EXTENT NOT INCLUDED,
25 THE APPLICABLE PER-MINUTE LONG DISTANCE RATES;
26 VII. PER-MINUTE ROAMING OR OFF-NETWORK CHARGES;

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
{ } is old law to be omitted.

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2 WILL BE COLLECTED OR RETAINED BY THE CELLULAR TELEPHONE SERVICE
PROVID-
3 ER;
4 IX. IF THE PLAN REQUIRES A FIXED-TERM CONTRACT, THE DURATION OF SUCH
5 CONTRACT;
6 X. THE AMOUNT OF ANY EARLY TERMINATION FEE AND THE CONDITIONS UNDER
7 WHICH ANY SUCH EARLY TERMINATION FEE WOULD APPLY, INCLUDING THE
LENGTH
8 OF ANY TRIAL PERIOD DURING WHICH NO EARLY TERMINATION FEE WOULD APPLY.
9 IN ADDITION TO ANY OTHER DISCLOSURES OF SUCH INFORMATION, THE FIRST BILL
10 RENDERED BY THE WIRELESS TELEPHONE SERVICES PROVIDER TO THE
CUSTOMER
11 SHALL INCLUDE NOTICE OF THE TERMS ON AND THE PERIOD OF TIME DURING
WHICH
12 SUCH SERVICE MAY BE TERMINATED WITHOUT PENALTY;
13 XI. WHETHER OR NOT AND, IF SO, THE EXTENT TO WHICH SERVICE PROVIDED BY
14 THE PLAN INCLUDES ENHANCED 911 SERVICE BY WHICH THE LOCATION OF THE
15 INDIVIDUAL PLACING THE 911 EMERGENCY CALL IS IDENTIFIED;
16 XII. BASED UPON CUSTOMER SUPPLIED INFORMATION REGARDING ANTICIPATED
17 USAGE PATTERNS AND UPON SUCH CUSTOMER'S REQUEST, A GOOD FAITH
ESTIMATE
18 OF THE MONTHLY FIXED AND USAGE CHARGES AND ADDITIONAL TAXES, FEES, OR
19 SURCHARGES AND OF THE ANTICIPATED TOTAL MONTHLY BILL FOR SUCH
CUSTOMER
20 UNDER SUCH PLAN.
21 B. ESTABLISH PROCEDURES FOR DISCLOSURE AT ANY POINT OF SALE OR OF
22 CONTACT WITH POTENTIAL OR EXISTING RESIDENTIAL CUSTOMERS OF MAPS
23 DISPLAYING THE CELLULAR TELEPHONE SERVICE PROVIDER'S OUTSIDE
COVERAGE
24 WITHIN THE STATE AND WITHIN EACH COUNTY OF THE STATE IN WHICH SUCH
25 PROVIDER PROVIDES SERVICE. SUCH MAPS SHALL BE PREPARED BY EACH
CELLULAR
26 TELEPHONE SERVICE PROVIDER IN THE STATE USING GENERALLY ACCEPTED
METHOD-
27 OLOGIES AND STANDARDS AS ESTABLISHED BY THE COMMISSION. SUCH MAPS
28 PREPARED ON THE COUNTY LEVEL SHALL IDENTIFY ALL GEOGRAPHIC AREAS
WITHIN
29 THE COUNTY LARGER THAN FOUR SQUARE MILES WHERE CELL PHONE COVERAGE
IS
30 NOT SUPPLIED.
31 C. REQUIRE OF EACH WIRELESS TELEPHONE SERVICES PROVIDER AN INFORMA-
32 TIONAL FILING WITH THE COMMISSION OF THE RATES, CHARGES, AND RATE PLANS
33 OFFERED BY SUCH PROVIDER TO RESIDENTIAL CUSTOMERS.
34 D. REQUIRE THAT:
35 I. USE CHARGES FOR COMMUNICATION USING, OR REDUCTIONS IN, THE ALLOT-
36 MENT OF MINUTES IN A CUSTOMER'S PLAN FOR, WIRELESS TELEPHONE SERVICES
37 SHALL NOT BEGIN UNTIL A CONNECTION BETWEEN THE CALLED PARTY AND THE
38 CALLING PARTY HAS BEEN ESTABLISHED;
39 II. THE BILL FOR WIRELESS TELEPHONE SERVICES SHALL BE CLEARLY ORGAN-
40 IZED, SHALL CLEARLY DESCRIBE IN PLAIN LANGUAGE THE PRODUCTS AND
SERVICES
41 FOR WHICH CHARGES ARE IMPOSED, AND SHALL CONFORM TO FORMAT
STANDARDS
42 ESTABLISHED BY THE COMMISSION;
43 III. THE BILL FOR WIRELESS TELEPHONE SERVICES SHALL CONTAIN ONLY
44 CHARGES FOR PRODUCTS AND SERVICES AUTHORIZED BY THE CUSTOMER;

45 IV. ROAMING CHARGES SHALL BE ITEMIZED ON THE CUSTOMER'S BILL WITHIN
46 SIXTY DAYS OF THE CALL'S BEING PLACED, AND SUCH ROAMING CHARGES SHALL
47 IDENTIFY THE DATE AND ORIGINATING LOCATION OF THE CALL;
48 V. TAXES AND FEES WHICH ARE REQUIRED BY FEDERAL OR STATE STATUTE OR
49 REGULATION TO BE COLLECTED FROM THE CUSTOMER SHALL BE SET FORTH IN A
50 SEPARATE SECTION OF THE BILL AND SHALL BE ITEMIZED SEPARATELY. NO
CHARGE
51 WHICH IS NOT REQUIRED TO BE RECOVERED FROM CUSTOMERS MAY BE INCLUDED
IN
52 SUCH SECTION OF THE BILL;
53 VI. CHARGES ASSOCIATED WITH THE USE OF WIRELESS TELEPHONE EQUIPMENT OR
54 SERVICES SHALL NOT BE THE LIABILITY OF THE CUSTOMER IF SUCH USE WAS
55 UNAUTHORIZED BY THE CUSTOMER DUE TO LOSS OR THEFT; PROVIDED THAT
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1 LOSS OR THEFT IS PROMPTLY REPORTED TO THE WIRELESS TELEPHONE SERVICE
2 PROVIDER.
3 E. ESTABLISH PROCEDURES FOR THE NOTIFICATION OF RESIDENTIAL CUSTOMERS
4 AT LEAST THIRTY DAYS IN ADVANCE OF ANY CHANGE IN RATES, CHARGES, TERMS,
5 OR CONDITIONS OF SERVICE FOR SUCH CUSTOMERS. WHERE ANY SUCH CHANGE
WILL
6 RESULT IN HIGHER RATES OR MORE RESTRICTIONS ON SERVICE OR WILL RESULT IN
7 A MATERIAL, ADVERSE CHANGE IN THE WIRELESS TELEPHONE SERVICE FOR SUCH
8 CUSTOMER, THE CUSTOMER MAY, WITHIN SUCH THIRTY DAY PERIOD, TERMINATE
9 SUCH SERVICE WITHOUT PENALTY AND RECEIVE A PRO RATA REFUND OF THE
CHARG-
10 ES, IF ANY, PAID FOR A HANDSET USED WITH SUCH SERVICE. SUCH NOTICE
11 SHALL, AT A MINIMUM, ADVISE THE CUSTOMER OF SUCH RIGHT TO TERMINATE, OF
12 THE RIGHT TO A HANDSET REFUND, AND OF THE STEPS TO TAKE TO IMPLEMENT
13 SUCH TERMINATION.
14 F. ESTABLISH PROCEDURES FOR THE TIMELY PRIOR NOTICE TO RESIDENTIAL
15 CUSTOMERS OF THE WIRELESS TELEPHONE SERVICES PROVIDER'S INTENT TO
TERMI-
16 NATE SERVICE SUCH THAT, AT A MINIMUM, SUCH CUSTOMER IS FULLY ADVISED OF:
17 I. THE AMOUNT WHICH MUST BE PAID TO MAINTAIN SERVICE;
18 II. THE PROCEDURES AVAILABLE TO MAKE SUCH PAYMENTS SO THAT THE TERMI-
19 NATION MAY BE AVOIDED; AND
20 III. THE COMMISSION'S COMPLAINT HANDLING PROCEDURES.
21 G. ESTABLISH PROCEDURES FOR THE HANDLING OF RESIDENTIAL CUSTOMER
22 COMPLAINTS WHICH, AT A MINIMUM, SHALL REQUIRE THAT EACH WIRELESS TELE-
23 PHONE SERVICES PROVIDER SHALL:
24 I. MAINTAIN PROCEDURES FOR PROMPT INVESTIGATION OF ANY COMPLAINT ON A
25 BILL FOR RESIDENTIAL WIRELESS TELEPHONE SERVICE RENDERED OR ON ANY
OTHER
26 TERM OF A CONTRACT FOR SUCH SERVICES, AND FOR PROMPT REPORTING TO THE
27 COMPLAINANT OF THE RESULT OF SUCH INVESTIGATION. IF SUCH REPORT IS MADE
28 ORALLY, THE WIRELESS TELEPHONE SERVICES PROVIDER SHALL OFFER THE
29 COMPLAINANT, UPON A WRITTEN REQUEST, THE OPPORTUNITY TO RECEIVE THE
30 REPORT IN WRITING;
31 II. INFORM ANY COMPLAINANT WHOSE COMPLAINT IS RESOLVED IN FAVOR OF
32 WIRELESS TELEPHONE SERVICE PROVIDER, IN WHOLE OR IN PART, OF THE AVAIL-
33 ABILITY OF THE COMMISSION'S COMPLAINT HANDLING PROCEDURES;
34 III. REFRAIN FROM TERMINATING SERVICE FOR NONPAYMENT SO LONG AS A
35 COMPLAINT IS PENDING BEFORE A WIRELESS TELEPHONE SERVICES PROVIDER OR

36 THE COMMISSION AND FOR FIFTEEN DAYS THEREAFTER, OR FOR SUCH PERIOD AS
37 THE COMMISSION FOR GOOD CAUSE SHALL ESTABLISH; PROVIDED HOWEVER,
THAT,
38 AS A CONDITION OF CONTINUED SERVICE DURING THE PENDENCY OF ANY SUCH
39 DISPUTE, A CUSTOMER SHALL PAY THE UNDISPUTED PORTIONS OF ANY BILL FOR
40 SERVICE, INCLUDING BILLS FOR CURRENT CHARGES OR SUCH GREATER OR LESSER
41 AMOUNTS AS THE COMMISSION DETERMINES REASONABLY REFLECT THE
UNDISPUTED
42 COSTS OF SERVICE TO SUCH CUSTOMER OR ARE NECESSARY TO FAIRLY
COMPENSATE
43 THE WIRELESS TELEPHONE SERVICES PROVIDER FOR SERVICES RENDERED WHILE
THE
44 COMPLAINT IS PENDING AND FOR FIFTEEN DAYS THEREAFTER; AND
45 IV. REFRAIN FROM TREATING THE DISPUTED PORTION OF ANY BILL AS LATE
46 DURING THE PENDENCY OF ANY COMPLAINT BEFORE THE UTILITY OR
MUNICIPALITY.
47 H. INCLUDE SUCH FURTHER REGULATIONS AS ARE NECESSARY TO ENSURE THAT
48 THE RESIDENTIAL CONSUMER PROTECTIONS ESTABLISHED BY THE COMMISSION'S
49 REGULATIONS PURSUANT TO THIS SECTION ARE, AT A MINIMUM, COMPARABLE TO
50 THOSE PROMULGATED BY THE COMMISSION AND APPLICABLE TO PROVIDERS OF
WIRE-
51 LINE TELEPHONE SERVICES; PROVIDED, HOWEVER, THAT NOTHING IN THIS PARA-
52 GRAPH SHALL PROHIBIT THE COMMISSION FROM PROMULGATING REGULATIONS
PURSU-
53 ANT TO THIS SECTION THAT AFFORD GREATER CONSUMER PROTECTION TO
54 RESIDENTIAL WIRELESS TELEPHONE SERVICE CUSTOMERS THAN ARE OTHERWISE
55 PROVIDED BY STATUTE OR REGULATION TO RESIDENTIAL WIRELINE TELEPHONE
56 SERVICE CUSTOMERS.

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1 3. TO THE EXTENT THAT THE WIRELESS TELEPHONE SERVICE PLAN PROVIDED TO
2 A RESIDENTIAL CUSTOMER DOES NOT INCLUDE THE PROVISION OF ENHANCED 911
3 SERVICE BY WHICH THE LOCATION OF THE INDIVIDUAL PLACING THE 911 EMERGEN-
4 CY CALL IS IDENTIFIED, ANY HANDSET SOLD, LEASED, OR OTHERWISE PROVIDED
5 TO THE CUSTOMER WITH SUCH PLAN SHALL BEAR A DISTINCTIVE MARKING OR
6 LEGEND TO STATE THAT THE SERVICE PROVIDED ON THAT HANDSET DOES NOT
7 INCLUDE ENHANCED 911 SERVICE. IF A HANDSET IS SOLD, LEASED, OR OTHERWISE
8 PROVIDED TO THE CUSTOMER WITH SUCH PLAN, THE WIRELESS TELEPHONE
SERVICE
9 PROVIDER SHALL SUPPLY A STICKER OR OTHER DEVICE TO THE CUSTOMER WHICH
10 MAY BE AFFIXED TO THE CUSTOMER'S HANDSET TO STATE THAT THE SERVICE
11 PROVIDED ON THAT HANDSET DOES NOT INCLUDE ENHANCED 911 SERVICE.
12 4. THE COMMISSION SHALL ESTABLISH BY RULE COMPLAINT HANDLING PROCE-
13 DURES WHICH SHALL INCLUDE, IN A MINIMUM:
14 A. PROVISION FOR INVESTIGATION AND INFORMAL REVIEW AND FOR APPEAL TO
15 THE COMMISSION IN ITS DISCRETION;
16 B. THAT THE BURDEN OF PROOF IN ALL PROCEEDINGS SHALL BE ON THE WIRE-
17 LESS TELEPHONE SERVICE PROVIDER, EXCEPT AS OTHERWISE PROVIDED BY THE
18 COMMISSION FOR GOOD CAUSE; AND
19 C. PROVISION FOR PARTIES TO RECEIVE A WRITTEN DETERMINATION SHALL SET
20 FORTH THE RELEVANT FACTS ESTABLISHED, THE REASONS FOR THE
DETERMINATION,
21 WHAT ACTIONS MUST BE TAKEN, AND WHAT FURTHER PROCEDURES ARE
AVAILABLE TO
22 A COMPLAINANT. THE COMMISSION SHALL USE ITS BEST EFFORTS TO COMPLETE ITS

23 INVESTIGATION AND REVIEW AND TO ISSUE, WITHIN NINETY DAYS, ITS FINAL
24 WRITTEN DETERMINATION OF ANY APPEAL TO IT PURSUANT TO THIS SECTION.
25 5. THE COMMISSION SHALL HAVE THE POWER, CONSISTENT WITH FEDERAL LAW,
26 TO ASSESS A PENALTY NOT TO EXCEED ONE THOUSAND DOLLARS AGAINST ANY
27 COMPANY THAT NEGLECTS OR KNOWINGLY FAILS TO COMPLY WITH ANY

REQUIREMENT

28 OF THIS SECTION OR ANY ORDER OF THE COMMISSION IMPLEMENTING OR
ENFORCING

29 THIS SECTION OR ANY SUCH REGULATION. ALL MONEYS RECOVERED FROM ANY
30 ADMINISTRATIVE PENALTY SHALL BE PAID INTO THE STATE TREASURY TO THE
31 CREDIT OF THE GENERAL FUND.

32 S 4. This act shall take effect on the one hundred twentieth day after
33 it shall have become a law; provided that the public service commission
34 is authorized to promulgate any and all rules and regulations and take
35 any other measures necessary to implement this act on its effective date
36 on or before such date.

REPEAL NOTE.--Subdivision 6 of section 5 of the public service law,
proposed to be repealed by section two of this act, provides for the
suspension of the applicability of the public service law to cellular
telephone service.

.SO DOC A 11526 *END* BTXT 2003